

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6283 OF 2005

Shankar Bhairu Patil .. Petitioner

Vs.

Nivrutti Dnyandeo Patil .. Respondent

Mr. P.D. Dalvi for petitioner.
Mr. V.B. Rajure for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2006.

P.C.:

1. Heard Mr. Dalvi the learned counsel for the petitioner.

2. Rule.

3. Mr. Rajure waives service for the respondent.

4. Rule taken up for final hearing forthwith in view of the nature of the order impugned.

5. The petitioner owns agricultural land admeasuring 17 gunthas in Gat No.593/1/A of village

Hasur Khurd in Kagal Taluka of Kolhapur District. The plaintiff claimed that defendant had agreed to sell the said land for a consideration of Rs.14,000/- on 2/7/1979 and the agreement was executed, more so when the petitioner-defendant was in need of the money. He did not stand by his agreement and, therefore, the plaintiff filed Regular Civil Suit No.43 of 1995 before the learned Civil Judge, Junior Division at Kagal for the relief of specific performance of contract. The suit came to be decreed on 24/4/2001 and the petitioner-defendant was directed to execute the sale deed of the suit property on or before 31/5/2001.

6. This decree was sought to be challenged by filing Regular Civil Appeal before the District Court at Kolhapur but belatedly and hence Misc. Civil Application No.199 of 2001 came to be filed for condonation of delay. By the impugned order dated 2/7/2005 the learned 3rd Additional District Judge, Kolhapur was pleased to reject the application for delay condonation.

7. The learned Judge of the Lower Appellate Court noted that the petitioner-defendant has engaged an Advocate before the trial court and he was negligent in attending to the court to contest the suit and his Advocate also remained absent on various occasions. The trial court had given him fair and proper opportunity but the defendant failed to take steps through his Power of Attorney. At the same time he observed that the delay caused in filing the appeal was not properly explained.

8. There is no dispute that the suit was decided on 24/4/2001 and the appeal along with the application for condonation of delay was moved before the Lower Appellate Court on 23/7/2001 i.e. after about three months. The petitioner claimed before the Lower Appellate Court that his Advocate did not inform him about the suit having been decided against him and he got the knowledge of the decision of the trial court for the first time in July 2001, he immediately applied for the certified true copy of the decree on 17/7/2001 and the same was made available to him on 18/7/2001. It was also submitted that the trial court

was on vacation from 7/5/2001 to 10/6/2001. Even if it is presumed that during the Summer Vacation the Registry of the trial court was opened, the fact remains that the petitioner-defendant is an illiterate villager staying away from the Taluka place and the delay of 60 days caused in filing the appeal was not such an extraordinary delay that the Lower Appellate Court could not have held in favour of the petitioner. The issue of delay has to be considered in the facts of each case and even if the petitioner's Advocate was negligent in the trial of the suit that itself will not be a reason to defeat the remedy of appeal merely because the appeal has been represented beyond time by 60 days. There was no reason to disbelieve that the petitioner-appellant got the knowledge of the trial court's decision for the first time in the month of July 2001. Under these circumstances, the view taken by the Lower Appellate Court in rejecting the application for delay condonation appears to be hyper technical and it would not be proper to defeat the statutory remedy of appeal for such a delay of 60 days even though it was not explained properly.

9. Hence the petition succeeds and the same is hereby allowed. The impugned order is quashed and set aside and Misc.Application No. 199/2001 stands allowed. The appeal submitted by the petitioner be registered by condoning the delay. However, the petitioner by way of costs shall remit an amount of Rs.500/- with the Registry of the Lower Appellate Court within a period of four weeks from today and the plaintiff may apply for withdrawal of the amount. Rule made absolute accordingly.

(B.H. Marlapalle, J.)